

² The Board notes that, following the May 27, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 7, 2020 appellant, then a 55-year-old sales and services distribution associate, filed an occupational disease claim (Form CA-2) alleging that she injured her right wrist, hand, and arm due to factors of her federal employment, including reaching further in front of her to pull and lift each package towards her and then to the right to the scale due to new COVID-19 plastic dividers installed at her workstation. She explained that she had to lift packages at arm's length and above her shoulders numerous times each day. Appellant reported that she first became aware of her claimed injury on February 6, 2017 and of its relation to her federal employment on September 22, 2020. On the reverse side of the claim form, appellant's supervisor, M.P., indicated that appellant had been placed on light duty due to restrictions and was working up to 25 percent of her regular shift. M.P. noted that the retail counter where appellant worked was 31 inches deep, so appellant could slide packages and thus had no reason to lift them at arm's length.

In support of her claim, appellant submitted a September 24, 2020 work restriction note signed by Dr. Carmela Romano, a Board-certified osteopath, advising that appellant should be on modified duty until November 23, 2020. Dr. Romano noted that appellant could use repetitive motions with her right hand for up to 25 percent of her shift and with her left hand for up to 75 percent of her shift. He further advised that appellant could grip and grasp with her right hand for up to 25 percent of her shift and with her left hand for up to 75 percent of her shift, could lift, carry, push, and pull no more than 10 pounds for no longer than 20 minutes per hour, and should never use a keyboard or mouse.

OWCP also received an October 1, 2020 letter from appellant to the postmaster, S.C., requesting light duty through November 23, 2020 per her doctor's recommendation. In an offer of light duty of even date, the employing establishment offered appellant a modified sales and services distribution associate position through November 23, 2020 in accordance with Dr. Romano's instructions and limited appellant's work to two hours per workday. Appellant accepted the light-duty offer.

In a development letter dated October 19, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence required and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information. It afforded both parties 30 days to respond.

OWCP subsequently received a position description dated September 28, 2019 detailing appellant's employment duties.

Appellant responded to OWCP's development questionnaire on October 26, 2020, reporting that she first noticed right upper extremity pain in February 2017 while sorting P.O. Box mail and began pain medication and light duty. She believed that heavy lifting, repeated movement, and reaching above her right shoulder at work contributed to her conditions. Appellant's symptoms improved with duty modifications, but she continued to have minor flare

ups. She advised that she was undergoing physical therapy and working with a brace. Appellant explained that outside of work, she engaged in boating and motorcycle riding as a passenger and used a computer for 10 to 30 minutes per day.

In an October 27, 2020 report, Dr. Kevin Maher, Board-certified in occupational medicine, related appellant's history of injury. Examination of the right upper extremity revealed tenderness to palpation of the medial epicondyle at the right elbow and a positive Finkelstein's test. Dr. Maher diagnosed a repetitive strain injury, tendinitis of the right wrist, right medial epicondylitis, right forearm muscle strain, and de Quervain's tenosynovitis. He opined that the mechanism of injury was repetitive heavy lifting at work on August 3, 2020, which was "consistent with [his] clinical exam[ination] findings and no information ha[d] been presented that would indicate a cause other than the alleged employment event/exposure." Dr. Maher recommended physical therapy and extended appellant's work restrictions through November 30, 2020. In a work status report of even date, he diagnosed right medial epicondylitis and extended the work restrictions through November 30, 2020.

In the employing establishment's November 17, 2020 response to OWCP's development questionnaire, M.P. repeated her factual challenge to appellant's claim, noting that customers could slide packages across the counter and thus there was no reason for appellant to lift packages at arm's length. She noted that appellant had to lift packages 1 to 2 inches from the counter to the scale, including intermittent packages up to 35 pounds and occasional packages up to 70 pounds.

In a November 30, 2020 progress report, Dr. Maher related appellant's history of injury and indicated that the reduction in appellant's work hours improved her condition somewhat. He also noted that appellant did not engage in any outside activities that might cause her symptoms. Dr. Maher continued to diagnose a repetitive strain injury, tendinitis of the right wrist, right medial epicondylitis, right forearm muscle strain, and de Quervain's tenosynovitis. He extended appellant's work restrictions through December 29, 2020.

By decision dated January 5, 2021, OWCP denied appellant's occupational disease claim, finding that the implicated employment factors had not been established. It noted that the evidence of record contained factual inconsistencies. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 1, 2021 appellant submitted several electronic message exchanges between herself and Dr. Romano dated February 6, 2017 through October 1, 2020 in which appellant reported right upper extremity symptoms and Dr. Romano recommended different forms of pain management.

In a November 30 work status report, Dr. Maher diagnosed right medial epicondylitis and extended appellant's work restrictions through December 29, 2020. In his December 29, 2020 progress report, he noted that appellant's conditions were "work-related" related and that appellant felt she was 70 percent improved. Dr. Maher diagnosed a repetitive strain injury, tendinitis of the right wrist, right medial epicondylitis, right forearm muscle strain, and de Quervain's tenosynovitis. He recommended continued physical therapy and extended appellant's work restrictions through January 29, 2021. In a work status note of even date, Dr. Maher diagnosed right medial epicondylitis and extended appellant's work restrictions through January 29, 2021.

On February 1, 2021 appellant requested reconsideration. She submitted a January 27, 2021 letter clarifying several factual matters raised in OWCP's January 5, 2021 decision. Appellant also submitted an offer of modified assignment from the employing establishment dated April 13, 2017, which appellant accepted.

OWCP also received a January 29, 2021 progress note from Dr. Maher in which he related that appellant's symptoms remained unresolved. Dr. Maher continued to diagnose a repetitive strain injury, tendinitis of the right wrist, right medial epicondylitis, right forearm muscle strain, and de Quervain's tenosynovitis. He advised that appellant should be transferred to a physical medicine and rehabilitation specialist for treatment of symptoms related to the alleged August 3, 2020 employment incident. Dr. Maher extended appellant's work restrictions through March 1, 2021 and added that appellant should not reach above her shoulders.

By decision dated April 1, 2021, OWCP modified the January 5, 2021 decision, finding that the evidence of record established the implicated employment factors. The claim remained denied, however, as the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment.

On May 13, 2021 appellant requested reconsideration. In support of her request, she submitted a Form CA-2 dated February 10, 2017 in which she alleged that she developed repetitive strain of her right arm muscles due to factors of her federal employment, including repetitive use of her right arm while "working the [P.O.] [B]ox letters and window service."³

In a May 13, 2021 work restriction note, Dr. Vatche Cabayan, a Board-certified orthopedic surgeon, listed appellant's date of injury as October 7, 2020. He advised that appellant could work up to four hours a day with repetitive use of the right upper extremity for 25 percent of the day and the left upper extremity for 75 percent of the day. Dr. Cabayan indicated that appellant should not lift, push, or pull more than 10 pounds.

By decision dated May 27, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

³ Appellant's employing establishment supervisor, J.S., signed the reverse side of the claim form on February 14, 2017, but OWCP noted in its April 1, 2021 decision that it had never received this claim form.

⁴ *Supra* note 1.

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹⁰ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

In medical reports dated October 27, November 30, December 29, 2020, and January 29, 2021, Dr. Maher diagnosed a repetitive strain injury, tendinitis of the right wrist, right medial epicondylitis, right forearm muscle strain, and de Quervain's tenosynovitis and opined that appellant's conditions were work related. In the October 27, 2020 report, he indicated that the mechanism of injury was repetitive heavy lifting at work on August 3, 2020, which was "consistent with [his] clinical exam[ination] findings and no information ha[d] been presented that would indicate a cause other than the alleged employment event/exposure." In his November 30, 2020 progress report, Dr. Maher indicated that the reduction in appellant's work hours improved her condition somewhat and noted that appellant did not engage in any outside activities that might cause her symptoms. While he provided affirmative opinions suggestive of causal relationship, he did not offer medical rationale sufficient to explain why he believed appellant's employment duties

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also* *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹¹ *Id.*; *Victor J. Woodhams*, *supra* note 8.

could have resulted in or contributed to her diagnosed conditions. Without identifying specific employment duties or explaining how they caused or aggravated appellant's conditions, these medical reports are of limited probative value and are insufficient to meet appellant's burden of proof.¹²

Appellant also submitted work restriction notes dated September 24, 2020 through May 13, 2021 from Drs. Romano, Maher, and Cabayan. None of these notes offered an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ For this reason, the work restriction notes are insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence sufficient to establish that her diagnosed medical conditions were caused or aggravated by the accepted factors of her federal employment, the Board finds that she has not met her burden of proof.¹⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁶

¹² See *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

¹³ *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ See *T.J.*, Docket No. 19-1339 (issued March 4, 2020); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

¹⁵ 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); see also *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹⁶ 20 C.F.R. § 10.606(b)(3); see *L.D.*, *id.*; see also *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁷ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁸ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).²⁰

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of her reconsideration request under 20 C.F.R. § 10.606(b)(3). The underlying issue on reconsideration is whether appellant has met her burden of proof to establish right upper extremity conditions causally related to the accepted factors of her federal employment. This is a medical issue which is addressed by relevant medical evidence not previously considered.²¹

In support of her request for reconsideration, appellant submitted a Form CA-2 dated February 10, 2017 and a work restriction note from Dr. Cabayan dated May 13, 2021. However, a Form CA-2 does not constitute relevant and pertinent new evidence as it is not medical evidence. Further, Dr. Cabayan's note does not address causal relationship and is, therefore, irrelevant to the underlying issue in this case.²² The Board has held that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.²³ Therefore,

¹⁷ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁸ 20 C.F.R. § 10.608(a); *see also* *A.F.*, Docket No. 19-1832 (issued July 21, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁹ 20 C.F.R. § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁰ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

²¹ *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *Eugene F. Butler*, 36 ECAB 393 (1984); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

²² *See id.*

²³ *See T.T.*, Docket No. 19-0319 (issued October 26, 2020); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECB 140 (2000).

OWCP properly determined that appellant is not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).²⁴

The Board, accordingly, finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²⁵

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 1 and May 27, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 6, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁴ *Supra* note 16.

²⁵ *J.B.*, *supra* note 19; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).